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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 781

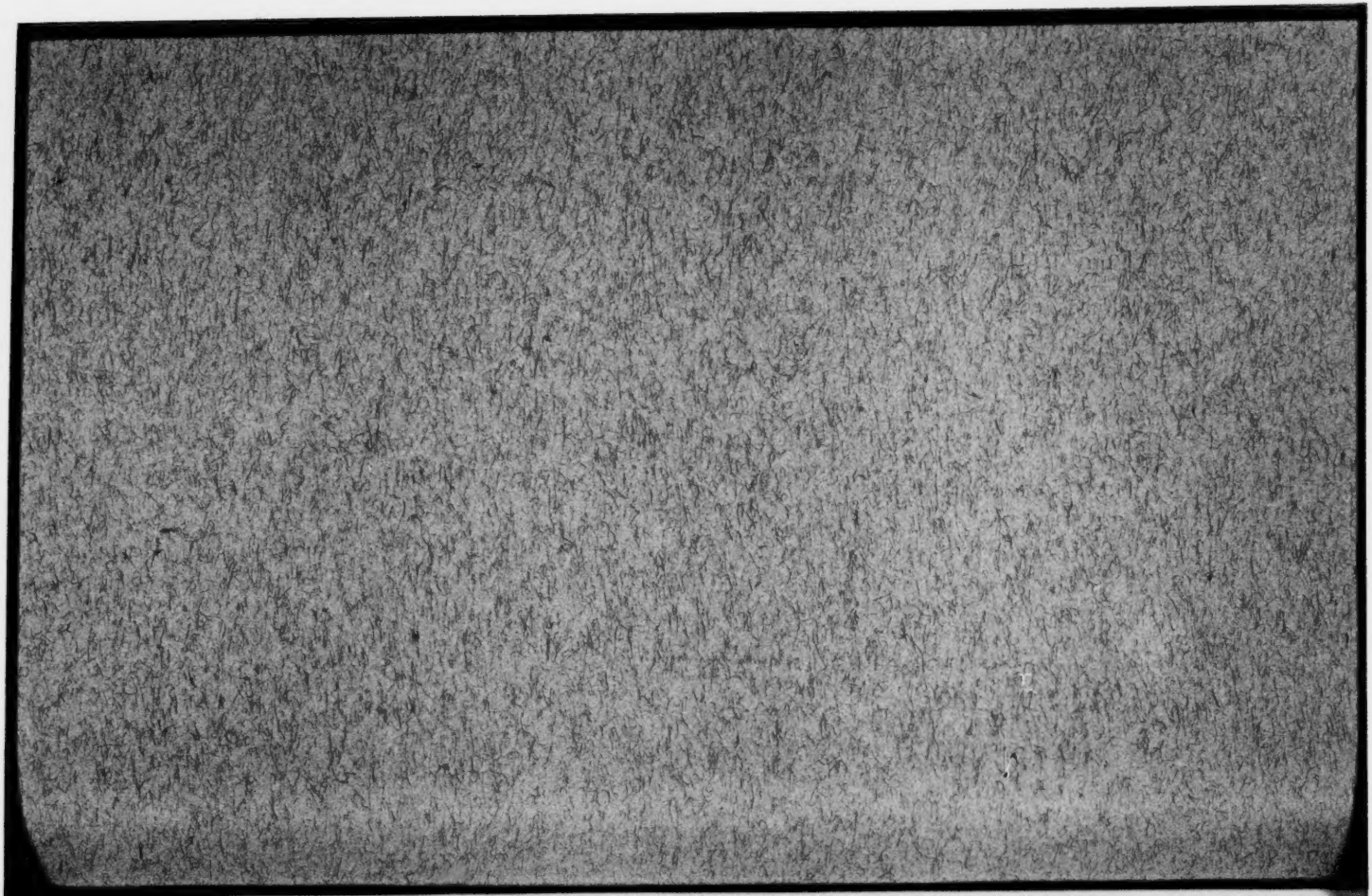
SOUTH MERCUR MINING COMPANY, A CORPORATION,
Petitioner,

vs.

NEW MERCUR MINING COMPANY, A CORPORATION, AND THE SNYDER MINES, INCORPORATED, A CORPORATION.

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

The decision of the Utah Supreme Court which petitioner seeks to have reviewed is expressly and clearly based upon its conclusion as a matter of law that the requirements of the U. S. Statute (U. S. Code, Title 30, Sec. 28) as to annual assessment labor were satisfied as to the unpatented Violet Ray mining locations owned by one party, (respondent New Mercur Mining Company), by work done by a second party, (respondent The Snyder Mines, Incorporated), in mine workings

and on nearby patented mining claims owned by a third party, (Consolidated Mercur Gold Mines Company), although there was no contractual relationship of any sort between the owner of the Violet Ray mining locations and the owner of the patented claims and workings thereon.

The petition in this case expressly and clearly seeks a review of the question of whether the Federal Statute can be so construed.

The Utah Supreme Court conceded that its ruling was "not free from doubt" (R. 26). It seems apparent from respondents' brief that they entertain doubt as to the soundness of the Utah Court's decision, and respondents' brief attempts to confuse the question clearly raised by the Utah Court's decision and presented by the petition.

Respondents complain of an inadequacy of the record, not to enable this Court to determine the question presented by the petition, but to enable this Court to disagree with the Utah Supreme Court's findings of fact and thus support the result of the Utah Court's decision regardless of the error in its construction of the Federal Statute. This seems to be nothing but a criticism that the record does not contain evidence which would enable this Court to review issues which are only factual and involve no question as to the proper construction of the Federal Statute. Respondents were served with petitioner's praecipe on February 20, 1943, but did not then or thereafter, nor do they now, seek to have the record enlarged.

Respondents discuss facts and evidence which are not in the record and not necessary for consideration of the question of law raised by the petition. Thus, on pages 2 and 3 of

their brief they discuss the amount of their asserted expenditures in operating under a lease (Exhibit 8-A) on other property. It is submitted that this is wholly immaterial to the question of construction of the Federal Statute. So also, on pages 4 to 6, they discuss work alleged to have been performed as to which the Utah Supreme Court expressly found against them (R. 21). So also, on pages 11 to 21, they discuss whether the workings in question could benefit, or tend to benefit the claims in question, but the question presented by the petition presupposes such possibility of benefit. Respondents have not pointed out any material question or issue as to which the record is inadequate.

Respondents' brief discloses that they are dissatisfied with certain findings of fact made by the Utah Supreme Court (R. 21) but they did not petition the Utah Court for a rehearing, and no Federal question for the consideration of this Court is involved in those findings.

Respondents, in their brief, cite texts and authorities uniformly setting out the necessity of common ownership to the applicability of group work, but no authority which will sustain the holding of this case that work performed in workings off the unpatented claims in question suffices as annual assessment work to hold these unpatented claims where there is no common ownership of the property where the work was performed and the unpatented claims for which the work is asserted, and no community of interest in the workings which makes it possible for the owner of the unpatented claims to extend and use such workings for the development of the unpatented claims.

Respondents, on pages 19 and 20 of their brief, discuss an agreement between the respondents, but ignore the entire

want of any agreement between New Mercur Mining Company, the owner of the unpatented Violet Ray claims, and Consolidated Mercur Gold Mines Company, the owner of the patented claims, through which agreement alone common ownership in the claims or the workings could arise.

On page 26 of their brief respondents cite *McArthur* v. *United States*, 315 U. S. 787, 62 S. Ct. 915; *United States* v. *N. E. Rosenblum Truck Lines, Inc.*, 315 U. S. 50, 62 S. Ct. 445; and *Lubetich* v. *United States*, 315 U. S. 57, 62 S. Ct. 449, as requiring denial of the petition. We submit that those cases, under the Motor Carrier Act, are entirely irrelevant and inapplicable.

The existence in this petition of a Federal question of general importance is undisputed by respondents.

Respectfully submitted,

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Raymond T. Senior,
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